

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218857

DATE: January 29, 1986

MATTER OF: Delmer Ziegler

DIGEST: An employee may not be paid per diem under 5 U.S.C. § 5725 when he is evacuated on an emergency basis from furnished quarters and relocated in commercial lodgings beyond the limits of his official duty station. However, since he was required to perform official duties at the location of the commercial lodgings, he may be reimbursed per diem and mileage allowances under the provisions of the Federal Travel Regulations applicable to travel in a temporary duty status.

An employee of the Fish and Wildlife Service who was forced to evacuate government-furnished quarters at the Seedskaadee National Wildlife Refuge may not be paid per diem in connection with his occupancy of commercial lodgings under the emergency evacuation authority of 5 U.S.C. § 5725 (1982).^{1/} However, since the commercial quarters were located beyond the limits of his permanent duty station and since the employee performed official duties at that location, the agency may process his claim under the Federal Travel Regulations as incident to an authorized temporary duty assignment.

BACKGROUND

Mr. Delmer Ziegler, formerly a construction inspector with the U.S. Fish and Wildlife Service in Denver, Colorado, was assigned to a project at Seedskaadee National Wildlife Refuge, Wyoming. Because of the length of the assignment and the distance from living accommodations, Mr. Ziegler was transferred to the Seedskaadee Refuge and assigned to government-furnished quarters. On March 19, 1984, Mr. Ziegler was forced to move out of his quarters due to frozen water lines. Since there were no other accommodations

^{1/} The Regional Director, Fish and Wildlife Service, Department of the Interior, Denver, Colorado, has requested an advance decision on the claim of Mr. Delmer Ziegler.

available at the wildlife refuge, he was authorized to move into a motel in the nearest town, Green River, Wyoming, a distance of 37 miles from the refuge.

The authorization for Mr. Ziegler's move was issued under the emergency evacuation authority of paragraph 4AM4.IG(5) of the Service Administration Manual. Mr. Ziegler remained in Green River until June 12, 1984. His claim for per diem during this period was disallowed by the certifying officer on the basis of Veldon A. Chapman, 58 Comp. Gen. 134 (1978), in which we held that there is no authority under the emergency evacuation provisions of 5 U.S.C. § 7525 to pay per diem and subsistence. The certifying officer stated that per diem could not be paid at an employee's duty station and disallowed Mr. Ziegler's claim for daily commuting expenses between Green River and his permanent duty station. Because he acted in good faith and pursuant to orders in relocating to commercial lodgings, the Fish and Wildlife Service asks whether Mr. Ziegler, nonetheless, may be reimbursed.

HOLDING

Under 5 U.S.C. § 5725 the immediate family and household goods of a government employee may be transported at government expense when an official determination is made that emergency evacuation is required. As noted earlier, we held in Veldon A. Chapman, supra, that employees may not be paid per diem and subsistence under this authority. See also, William A. Sherman, B-202657, January 26, 1982. Accordingly, the certifying officer was correct in disallowing Mr. Ziegler's claim under section 5725.

In the Chapman decision, however, we noted that an employee forced to evacuate his quarters is entitled to transportation and per diem under the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1983), if he is required to perform duty away from his official duty station. While the Federal Travel Regulations preclude payment of per diem and subsistence at an employee's official duty station, Federal Travel Regulations, para. 1-1.3c(1) defines the duty station of an employee who is not stationed in an incorporated city or town as the "reservation, station, or established area * * * within which the designated post of duty is located." Since Mr. Ziegler's duty station was the

B-218857

Seedskaadee National Wildlife Refuge, and since we would not consider the commercial lodgings he occupied in Green River as the place of abode from which he commuted daily to his official duty station, FTR, para. 1-7.6a would not preclude payment of per diem to Mr. Ziegler for any period he was authorized to perform official duties in Green River.

We have been advised by the Fish and Wildlife Service that in connection with Mr. Ziegler's duties as a construction inspector he kept daily logs on contractors, reviewed invoices, and scheduled partial payments for processing in Denver. According to the Acting Regional Director, these tasks were necessarily performed by Mr. Ziegler in Green River during the period that he was precluded from occupying government quarters within the wildlife refuge. Since it appears that Mr. Ziegler was required to perform official duties in Green River we would not object to the processing of his claim under the provisions of the Federal Travel Regulations applicable to travel in a temporary duty status.



Acting Comptroller General
of the United States